DOCUMENT RESUME

ED 344 794 SO 020 375

TITLE	Liberty: Constitutional Update. Bar/School Partnership Programs Series.
INSTITUTION	American Bar Association, Chicago, Ill. Special Committee on Youth Education for Citizenship.
SPONS AGENCY	Department of Education, Washington, DC. Office of Law-Related Education.
PUB DATE	88
CONTRACT	G008610548
NOTE	25p.; For related documents, see EJ 335 155, and SO 020 368-378.
AVAILABLE FROM	American Bar Association, 750 N. Lake Shore Dr., Chicago, IL 60611 ($1.00).
PUB TYPE	Guides - Classroom Use - Teaching Guides (For Teacher) (052)
EDRS PRICE	MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS	*Citizenship Education; *Civil Liberties; Class Activities; Constitutional Law; Curriculum Enrichment; Elementary Secondary Education; Freedom of Speech; *Law Related Education; Learning Activities; Lesson Plans; Social Studies; State Church Separation
IDENTIFIERS	American Bar Association; Bill of Rights; *First Amendment; Religious Freedom; *United States Constitution

ABSTRACT

This is the first of four special handbooks on constitutional themes. "The Idea of Liberty" (I. Starr) suggests that for teaching purposes, the First Amendment in the Bill of Rights is an excellent operating definition of liberty. "Introducing the First Amendment" (D. Sorenson) is a lesson plan for use with upper elementary and middle school students. "The Bill of Rights" (C. Yeaton; K. Braechel) is a lesson plan designed to introduce that document to students in grades 4-6. "Freedom of Speech" and "Freedom of Speech and Expression" (D. Greenawald) are lesson plans for grades 4-6 and 7-12 respectively, designed to teach students why freedom of speech is important in a democracy. "Come to the First Amendment Fair" (A. Blum) is a lesson plan for secondary students that focuses on the standards that may limit government in the free speech area. "Going beyond Darwin" (M. Croddy) examines legislation and court cases that have influenced what is taught in schools concerning evolution. "The Religious Guarantees" (National Archives), a lesson plan for use with secondary students, examines the two guarantees of the First Amendment that relate to religion. "Our Freedom to Assemble and Associate" (A. Blum), for use in grades 9-12, looks at these freedoms. "It's My Life" (J. D. Bloom), for use in secondary grades, focuses on governmental power. "Historical Foundations of Individual Liberties" (S. Jenkins), for grades 9-12, helps students understand how the historical antecedents of the Bill of Rights affect their daily lives. (JB)

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Liberty
Constitutional Update

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American Bar Association
Special Committee on Youth Education for Citizenship

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Isidore Starr

The Idea of Liberty

The idea of liberty wends its way through American history and literature. It is proclaimed on the Liberty Bell, it is designated an inalienable right in the Declaration of Independence, it is pronounced a blessing in the Preamble to the Constitution, it is protected in the Fifth and Fourteenth Amendments against arbitrary acts by government, and it is recited daily as part of the Pledge of Allegiance. But nowhere is it defined.

Abraham Lincoln put it very well when he said, in an address in Baltimore, April 18, 1864:

> The world has never had a good definition of the word liberty, and the American people, just now, are much in want of one. We all declare for liberty, but in using the same word we do not all mean the same thing. With some the word liberty may mean for each man to do as he pleases with himself, and the product of his labor; while with others the same word may mean for some men to do as they please with other men, and the product of other men's labor. Here are two, not only different, but incompatible things, called by the same name, liberty. And it follows that each of the things is, by the respective parties, called by two different and incompatible names – liberty and tyranny.

To avoid for the moment detours into definitions, I would like to suggest that for teaching purposes the First Amendment in the Bill of Rights is an excellent operating definition of liberty. It encompasses six significant principles: separation of church and state, religious freedom, freedom of speech, freedom of the press, the right to assemble peaceably, and the right to petition the government for redress of grievances. Each of these six dimensions offers opportunities to dig into the past and to discover how these principles came to be incorporated in this unique document.

Why is the First Amendment first? Was it intent, accident, or style? Perhaps it heads the constellation known as the Bill of Rights because it is basic to all the other rights. Those who drafted the first ten amendments knew firsthand the importance of freedom of thought, belief, inquiry, expression, petition, and assembly as a means of guaranteeing the other rights against the capricious or malicious whims of rulers. The First Amendment remains the best operating definition of liberty, and, as such, it contributes to the delineation of the dignity and integrity of the individual. It is understandably the first of what Madison referred to as the "Great Rights."

Why do the first ten words of the First Amendment prohibit an establishment of religion? Why did the drafters begin with this commandment rather than with one relating to speech or press?

Separation of church and state has been sought in America by both religious and political leaders. Roger Williams advocated "the wall of separation between the garden of the church and the wilderness of the world," and Thomas Jefferson supported "a wall of separation between church and state." One sought the wall to protect the church, the other the state. The result was the construction of a constitutional barrier to an establishment of religion and the beginning of a series of controversies which would carry over into the future. The use of public funds for busing parochial school students, released time, required sectarian prayers and Bible reading, religious practices in public schools, various forms of parochial aid, tax exemptions for church properties, and the teaching of the theory of evolution continue to find their way into the public forum and judicial tribunals.

In wrestling with these issues, the Supreme Court has formulated a number of guidelines: child benefit, neutrality, complete separation, nonpreference, and accommodation. The Court's rulings have been attacked as atheistic, communistic, and secularistic. In a disturbing number of instances, school authorities have deliberately disobeyed the Court's decisions on the Bible and school prayer. One can only speculate on the relationship be-

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Isidore Starr is a lawyer-educator who is widely recognized as the father of law-related education. Previous versions of this article appeared in Daring to Dream: Law and the Humanities for Elementary Schools *(Chicago: American Bar Association, 1980) and* Education for Responsible Citizenship: The Report of the National Task Force on Citizenship Education, *cosponsored by The Danforth Foundation and the Institute for Development of Educational Activities, Inc., the educational affiliate of the Charles F. Kettering Foundation. It was published by McGraw-Hill Book Company in 1977.*

tween the educator as a lawbreaker and the educator as a model of responsible citizenship.

On the other side, the religious freedom clause has been invoked to ensure parochial school education, to safeguard the educational objectives of selected religious sects, to permit schoolchildren to refuse to engage in patriotic ceremonies contrary to their religious beliefs, and to excuse conscientious objectors from military service where strongly held beliefs were comparable to traditional religious faith.

These are types of questions which responsible citizens will have to face for years to come. A pluralistic society with its contemporary condemnation of the melting pot is dedicated especially to respecting differences in customs, beliefs, and traditions. To what extent can education remove or moderate the prejudices and biases, which often emerge as barriers to the fulfillment of the ideal and practice of respect for the beliefs of others?

Freedom of speech and of the press, like the religion clauses, are basic liberties that help to define the dignity and integrity of the individual. The citizen who fears to express his views on public issues, whether within the school or in the public forum, is a diminished man or woman. Living in fear of governmental officials—national, state, or local—or apprehensive of what the community will think, means that quiet desperation or silent surrender becomes a way of life. There may be many who have little or nothing to say; but that may be due, in part, to an education which discouraged public discourse on moral-ethical questions and encouraged self-censorship and self-preservation. When this happens, the freedom of expression clauses become mere "parchment barriers."

Do we have the right to say anything, anywhere, and anytime? Is the First Amendment absolute in its protection of freedom of expression? It is certainly worthwhile to explore with students in a general way the various interpretations of the First Amendment: the absolute position, the preferred position, the clear-and-present-danger rule, and the balancing principle.

The real test of the First Amendment's free speech provision is in the concrete case. Why is free speech prohibited or limited in the library and in the classroom? Why is certain language regarded as improper? When does speech become slander? When does speech become conduct? The story of Socrates, the use of "fighting words," and the case of Irving Feiner, an unpopular speaker confronted by a hostile audience, force our students to face significant value conflicts demanding resolution. The latter case has important implications for classroom decorum (*Feiner v. New York*, 340 U.S. 315 [1951]). Does an individual or a group have the right to interrupt and to disrupt the right of a speaker to address an audience in the street or in an auditorium? Does the American Nazi party have the constitutional right to march in Skokie, Illinois, a Chicago suburb heavily populated with Jews, many of whom survived the Holocaust?

The Tinker case, popularly known as the "Black Armband" case, brought a freedom of speech issue from school surroundings into the Supreme Court. Widely criticized and just as widely unread, the decision held that freedom of speech is a preferred right in school as elsewhere; and that the imposition of restraints will be justified only upon reasonable prediction by school officials that the expression will substantially interfere with or materially disrupt discipline in the school. The schoolhouse gate does not bar the Bill of Rights from the school, declared the Court, but students do not have a blank check to interfere with the conduct of an educational system.

Students have gone to court to seek legal clarification of such freedom of expression issues as dress, hairstyle, "underground" newspapers, and "provocative" language. Resort to the courts rather than to the streets indicates a commendable trend toward responsible citizenship. On the other hand, it can be argued that school issues should be settled within the confines of the school. If that is to be done with any degree of success, both students and educators must have some understanding of the historic, philosophical, and constitutional dimensions of freedom of expression in the world at large.

Is there a constitutional right to listen without interruption to what a speaker is saying on a street corner, in a hired hall, in a school classroom, or in a school auditorium? Does a student body, invited to hear a speaker, have the right to interrupt if they find the views expressed an appeal to intolerance and hate? Does a speaker have any obligation to the audience in particular and to the community in general? Is there a constitutional mandate to grant tolerance to those who preach intolerance? What are the ethical and moral issues involved in these tormenting queries?

Freedom of the press is freedom written large both on newspaper stands and on the television screen. Although reviled by the Federalist press, Thomas Jefferson championed freedom of the press in these words: "The basis of our governments being the opinion of the people, the very first object should be to keep that right and were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter." The power of the press has been used, at times, however, to whip up public opinion against an accused and to cater to the prejudices of the community in the interest of circulation. The right to a fair trial and the right to a free press are in collision; which has priority?

How far should the press be able to proceed in criticizing public officials or prominent figures? Does the press have the right to disclose policy decisions which may embarrass the government? Should the press have the right, daily and nightly, to invade the privacy of homes, as well as people's thoughts and feelings? What is the relationship between the press, public morality, the law, and the issue of obscenity?

Issues concerning freedom of the press have become a part of the life of the school. School newspapers have commented on school policy and administrative rulings in rhetoric which is, to say the least, unflattering to the educators. In turn, school officials have censored the newspapers. In their turn students have produced so-called underground papers, and the response has been more restraints. *In extremes*, the courts have been invited to rule on whether school officials have the legal authority to censor student newspapers. If they do, is prior or post restraint the best way to conduct education for responsible citizenship?

Other components of the constellation of liberty are the important right to petition and the right to assemble peaceably. In the Declaration of Independence, one of the grievances of the Founding Fathers against the British was "our repeated petitions have been answered only by repeated injury."

There were times in our history when such petitions were regarded as seditious and criminal. In some countries today, citizens would not think of petitioning for redress of grievances because to do so would invite the heavy hand of government intervention.

Our ancestors fought for the right to petition, but some of us may now be afraid to use it. For example, on July 4, 1951, a newspaper in Madison, Wisconsin, had reporters on the street try to get people to sign a petition stating that they believed in the Declaration of Independence. Only one person out of 112 interviewed at random agreed to sign. Later, the *New York*

(continued on page 16)

Liberty

Introducing the First Amendment/Upper Elementary/Middle Donna Sorenson

Susan Wise

This activity will take two class periods, though it can be compressed to one if it's used by an outside resource expert. (It would be a natural for a lawyer or judge interested in the First Amendment, as well as for a representative of the media.) It has two objectives:

1. Students will inductively discover the First Amendment in action through newspaper reading.
2. Students will get an overview of the Bill of Rights.

Procedure

Using a classroom set of newspapers. . . .

1. Hand out the national and local sections of the daily paper.
2. Ask students to use a colored pen or marker and cross out any articles in these two sections of the paper that contain criticism of government, government leaders or government policies and/or any that contain proposed changes of official people or positions.
3. Discuss articles and any questions or "borderline" articles that students marked.
4. Discuss with students:
   - How interesting and/or informative would the newspaper be if all of the marked articles were missing?
   - Have you ever known of anyone personally damaged – emotionally, professionally or financially – by something printed in the newspaper? Did this change your opinion of "freedom of the press?"
   - Is freedom of the press absolute? You may wish to discuss questions of libel, free press/fair trial, publication of national secrets.
   - Is the press – and the television/radio news – less "free" in some communities in the United States than others?
5. If time permits, the video tape, "A Question of Balance: Fair Trial/Free Press," produced by the American Bar Association's Communication Department and the Association of American Newspaper Publishers, discusses an issue that seemingly conflicts with a completely free press. A copy of this video tape can be ordered from Visual Associates, Inc., 665 Fifth Avenue, New York, New York 10022.
6. Use a cartoon or another news article to illustrate that there are other significant constitutional amendments beyond the familiar First Amendment.
7. Distribute to students a copy of the Bill of Rights.
8. Review with them and/or have them find in the dictionary any unfamiliar words, i.e., "abridging," "redress," "grievances."
9. Allow students to choose one of the first ten amendments and find articles in the newspaper that relate to "their" amendment. Allow them to go to other issues of the newspaper or news magazines to find relevant articles, if necessary.
10. Finally, the teacher may assign students to make a bulletin board displaying the news articles found labeled with the appropriate amendment.

Donna Sorenson is a Salt Lake District teacher. This activity was revised by Carol Lear and is part of the curriculum published by the Utah Law-Related and Citizenship Education Project.

The Bill of Rights/Grades 4-6 Connie Yeaton and Karen Braechel

NANCY

I will not talk in class
I will not giggle in class
I will not chew gum in class
I will not daydream in class
In fact, you'll probably never have to yell at me again!
So what are you going to do for excitement from now on?
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Objectives

Students will be able to identify the Bill of Rights as that portion of the Constitution which protects individual freedoms by illustrating at least three of the freedoms.

Background

The Constitution establishes a system of government with delineated duties and obligations. When signatures were added to the final document, the framers of the Constitution knew the instrument was not yet perfect. One area causing difficulty was the lack of a statement of individual rights. Several state constitutions already had these rights listed.

In order for the convention to move smoothly to closure, an agreement was reached to consider a bill of rights after the Constitution was ratified. Accordingly, the first ten amendments were added on December 15, 1791. In a mere 462 words, they defined the rights of people in the United States.

This lesson is designed to introduce the Bill of Rights to young people. They will learn that their rights are protected by our laws, but they also must act responsibly. Several situations involving personal rights will be studied.

Procedure

1. Distribute copies of "Freedom of Speech, Jr."
2. Explain that on the sheet there are six situations. They will have several questions to answer about each example and should think carefully before making any decisions. They can write the answers on the handout.
3. After students have completed the activity independently, have them assemble in groups of four to discuss their opinions. Instruct them to arrive at a group consensus for each item. Then have groups report to the whole class.
4. Conclude the discussion with these questions: Can you come up with a general rule stating when people should be allowed freedom of speech? When should it not be allowed? Should adults have more freedom of speech than children? What if these people in the examples had been adults? Would it make any difference? Why or why not? What would happen if people were not allowed any freedom of speech?
5. Read the newspaper article "Students Can Be Suspended for Vulgar, Offensive Language," the case that recently came before the Supreme Court concerning freedom of speech. Students might find this interesting since it concerns a speech given by a high school boy in support of his friend's candidacy for vice-presidency of the student body. As you read the newspaper article, have the students listen for the Supreme Court's answers to the questions discussed on the activity sheet.
6. Consider the questions: Does this behavior interfere with another individual's rights? Is the action acceptable? If no, should this behavior be regulated by a rule? If a rule is needed, should it be made by individuals or by the government?

   (Answers: Yes, society expects appropriate speech and behavior in public places. No, vulgar and offensive terms should not be used. Yes, a rule should be made for the general welfare of the students and society. The rule should be made by the local school board.)
7. Go through another situation by reading the following: The children of Bershire Elementary School were studying the pioneers. They were asked to write an essay for the school newspaper that included a conversation between two pioneer children. The paper was to be as true to life as possible, but no other directions were given.

   When Jonathan handed in his paper, the teacher was appalled. Jonathan's essay described a heated argument over a game two pioneer children were playing. The conversation included some swear words—language considered inappropriate for a school situation. The teacher not only verbally scolded him, but also insisted that he redo the assignment for publication. Jonathan had worked hard on the essay. He felt that the conversation was realistic and the language used was appropriate for that particular situation. Thus, he refused to do as the teacher asked.
8. Discuss these questions with the class: Was Jonathan justified in including swear words in his essay? Should

he be allowed to do this? Was his teacher correct in asking Jonathan to rewrite his essay? If the teacher permits Jonathan to include swear words in this essay, should he and other children be permitted to do the same in other essays? Should the swear words be printed in the school paper? Who should decide this issue: Jonathan? The teacher? The principal? Jonathan's parents? A judge? Explain.

9. Explain that in the discussions about freedom of speech and freedom of the press, you have been talking about the right of people to do or not to do something.

   The writers of the Constitution were concerned with the rights of individual people living in the United States. Several states already had a list of those rights in their state constitutions. Some suggested that such a list be part of the United States Constitution, but others did not feel it was necessary.

   A compromise was once again reached. Remember that a compromise is putting together an idea by using parts of two different ideas. Each side gives up part of its idea to reach an agreement. Those wanting a bill of rights agreed to sign the Constitution if it would be added later. Those who felt it was unnecessary agreed to the addition of a bill of rights, if that would make the others sign the Constitution. The first ten amendments, or additions, to the Constitution list rights of citizens of the United States. We call these ten amendments "The Bill of Rights."

10. Explain that so far the discussion has been on two different rights listed in the Bill of Rights – freedom of speech and freedom of the press. Congress may not make laws limiting these freedoms. However, this does not give individuals the right to say or print false things. Nor does it allow people to endanger others by speech or writing.

    One example of abusing freedom of speech is yelling "FIRE!" in a crowded theater. Such irresponsibility could cause people to panic and result in death.

11. List some of the other rights found in the Bill of Rights.
    - One is freedom of religion, which means we can each worship as we want, at the church we choose. It also means that we have the right not to worship.
    - People are protected from unreasonable searches and seizures. Police are not allowed to enter and search a person's home without a warrant signed by the court. This order states what is expected to be found. This same rule applies to the person's possessions.
    - We are guaranteed the right to a fair trial if we have to go to court. Cruel and unusual punishment may not be used. For instance, hanging a person by the thumbs would not be a correct punishment for speeding.

    With each of the rights listed, there are responsibilities. It is up to each person living in the United States to consider other people. We must not interfere with their rights, if we want to maintain our own freedom.

12. Pass out constuction paper. Instruct students to label this, "Our Freedom: Our Bill of Rights." Fold paper in thirds. Illustrate three individual rights guaranteed by our Constitution. Use a summary of the Constitution for reference.

Handout: Students Can Be Suspended for Vulgar, Offensive Language

WASHINGTON – The Supreme Court today significantly broadened the disciplinary powers of public school administrators, ruling that students may be suspended for using "vulgar and offensive" language.

By a 7-2 vote, the Court upheld the three-day suspension in 1983 of a Spanaway, Washington, high school senior for giving an assembly speech filled with crude sexual allusions.

"Surely it is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse," Chief Justice Warren E. Burger wrote for the court.

Matthew Fraser's one-minute speech in support of a friend's candidacy for student body vice president of Bethel High School contained no dirty words, but it caused a brief uproar among his fellow students.

His friend won the election by a wide margin.

Officials at the school in suburban Tacoma suspended Fraser for violating the school's disruptive conduct rule in "materially and substantially' interfering in the educational process.

Now a student at the University of California at Berkeley, Fraser sued school district officials with help from the American Civil Liberties Union.

A federal judge ruled that Bethel High officials had violated Fraser's free-speech rights by disciplining him, and the 9th U.S. Circuit Court of Appeals upheld that ruling by a 2-1 vote.

School officials were ordered to pay Fraser $278 in damages and $12,750 in legal costs. Today, the Supreme Court said the lower courts were wrong.

The Reagan administration had urged the court to rule against Fraser. Justice Department lawyers argued that student speech may be restrained "if officials have a reasonable basis for the regulation grounded in the maintenance of an atmosphere of civility or the transmission of basic societal values."

They said such regulations should not be used to suppress "student expression of a particular political viewpoint."

Burger wrote: "The determination of what manner of speech in the classroom or in (a) school assembly is inappropriate properly rests with the school board."

He was joined by Justices Byron R. White, Lewis F. Powell, William H. Rehnquist and Sandra Day O'Connor.

Justices William J. Brennan and Harry A. Blackmun voted against Fraser but did join Burger's opinion.

Justices Thurgood Marshall and John Paul Stevens dissented.

Freedom of Speech, Jr. Handout

Directions: Read the situations below. Answer each question.

Example: Tommy swears at the principal.
Does this behavior interfere with another individual's rights?
Yes, the principal's rights are violated.
Is the action acceptable?
No, this language is unacceptable.
If no, should this behavior be regulated by a rule?
Yes, a rule could be written.
If a rule is needed, should it be made by individuals or by the government?
Individuals should write the rule.

1. Jimmy, a real joker, stands up during math time in Mrs. Snorgweather's class and yells, "I smell smoke!" (He really didn't.)
   Does this behavior interfere with another individual's rights?

   Is the action acceptable?

   If no, should this behavior be regulated by a rule?

   If a rule is needed, should it be made by individuals or by the government?

2. Mary thinks there is not enough peanut butter in the sandwiches at the lunchroom, so she makes a protest sign and puts it up in the cafeteria. It reads: "We want more peanut butter!"
   Does this behavior interfere with another individual's rights?

   Is the action acceptable?

   If no, should this behavior be regulated by a rule?

   If a rule is needed, should it be made by individuals or by the government?

3. Susie walks up to her grandmother, takes a sniff, and announces, "Grandma, you smell funny."
   Does this behavior interfere with another individual's rights?

   Is the action acceptable?

   If no, should this behavior be regulated by a rule?

   If a rule is needed, should it be made by individuals or by the government?

4. Alan and his friends are playing jump rope and singing loudly outside of the library window.
   Does this behavior interfere with another individual's rights?

   Is the action acceptable?

   If no, should this behavior be regulated by a rule?

   If a rule is needed, should it be made by individuals or by the government?

5. Mr. Swartz' class wants to play softball instead of kickball at recess time. They ask Mr. Swartz if they can have a class meeting to decide.
   Does this behavior interfere with another individual's rights?

   Is the action acceptable?

   If no, should this behavior be regulated by a rule?

   If a rule is needed, should it be made by individuals or by the government?

6. Annie's teacher tells her to be quiet. Annie takes a big piece of tape and puts it over her mouth in mock protest.
   Does this behavior interfere with another individual's rights?

   Is the action acceptable?

   If no, should this behavior be regulated by a rule?

   If a rule is needed, should it be made by individuals or by the government?

Extension Activities

1. Ask each student to prepare a "Bill of Rights for Students." Post these on the bulletin board.
2. Review a newspaper article dealing with a right.
3. Present the following situation for discussion: "There are too many vulgar words in today's books. Possible solution—burn all books with offensive language."

This article is taken from A Salute to Our Constitution and the Bill of Rights: 200 Years of American Freedom, *which was created by Connie Yeaton, law-related education coordinator for the Indiana State Bar Association, and Karen Braeckel, newspaper in education consultant for* The Indianapolis Star *and* The Indianapolis News.

This activity will help students identify why freedom of speech is important in a democracy and how their life would be different without it. They will also recognize that there are limits on freedom of speech and that this freedom demands responsibility in its use. This exercise, which will take approximately 45 minutes, will also develop analytical skills.

Procedures

Have each student make a list of how his or her life might be different if there was no freedom of speech. For example, their favorite TV show might be cancelled because someone in the government didn't like it. Share the answers with the class and briefly discuss each.

Discuss why it is important to have as many ideas about an issue as possible. The major point to be made here is that the more ideas that are discussed the higher the likelihood of a good one being selected.

Indicate to students that a long time ago men wrote a set of rules or guidelines describing how our country ought to be governed. These rules are called the Constitution and its amendments. The First Amendment guarantees that all of us have freedom of speech. Think about the following situations and decide if you think that there should be a right to say or print these kinds of things.

- lies; things that aren't true
- things that may cause damage, such as printing or saying something false about a person that causes him or her to lose the respect of the community and suffer financial consequences
- fighting or threatening words, such as threatening to hurt people if they don't do what you want them to do
- saying something that may be dangerous, such as creating a panic by spreading a false rumor
- saying things that people find offensive, such as nasty words.

Looking at Some Cases

From thinking about these examples, do students think that people have a right to say whatever they want all of the time? Why or why not? In what kinds of situations may there be limits on what people can say?

Depending upon the maturity of students they may work in groups or individually to use the criteria developed above to consider what might happen if freedom of speech allowed people to do the following: (They should think about what might happen in each instance and whose rights would be in conflict.)

- shout fire in a crowded place when there was no fire
- take out an ad in a local paper and say that a business has terrible products when, in fact, the products are very good
- criticize the police or the president in a TV speech
- send letters to other people with insulting language
- send a letter to an editor of a newspaper supporting an unpopular group such as the communists

Discuss each of the cases with the entire class. Use the discussion of these issues – and especially the discussion of criticism of the president and the letter to the editor – to help students recognize what kinds of activities are protected and which ones aren't.

A Supreme Court Case

Read or have students read the brief description of the Tinker case and consider if the Tinkers should have been allowed to wear their arm bands. Ask students to list reasons why the Tinkers should be allowed to wear arm bands; ask them to list reasons why they shouldn't be allowed to wear arm bands. The resource person should critique student responses and at the conclusion explain the Court's reasoning in allowing the Tinkers freedom of expression.

The Tinker Case

John and Mary Beth Tinker felt that the war in Vietnam was wrong. Many people around the country were wearing black arm bands to express their belief that the war was wrong. John and Mary Beth decided to wear black arm bands to school. The principal told them that they couldn't do that, although students were allowed to wear political buttons.

The Tinkers wore the arm bands to school anyway. Some students outside of the school got angry with John and Mary Beth for wearing the arm bands. The principal sent John and Mary Beth home and told them not to come back until they had taken off the arm bands.

Should the Tinkers be allowed to wear the arm bands? Whose rights are in conflict here? Do you think that the First Amendment should be applied to allow the Tinkers to wear the arm bands? Why or why not?

THE COURT DECIDES

The Supreme Court held 7-2 that the First Amendment permitted the wearing of arm bands to school as a protest.

Justice Fortas held for the majority that neither students nor teachers "shed their constitutional rights of freedom of speech at the schoolhouse gate...Students...are 'persons' under our Constitution. They are possessed of fundamental rights which the state must respect."

As long as the protest would not "materially and substantially interfere with school discipline," it is permitted.

Justices Harlan and Black dissented, arguing that the widest possible latitude must be accorded school officials to maintain appropriate discipline. As long as the principal's order was not intended to prohibit an unpopular point of view while permitting majority opinion, it should be permitted.

Freedom of Speech and Expression/Grades 7-12 Dale Greenawald

Using three landmark Supreme Court cases, students will work with a community legal expert to explore the benefits of and limits to freedom of speech. The teaching time of this one is approximately 45 minutes. It's a natural for a community legal expert (e.g., judge, lawyer or law professor).

Objectives

To identify benefits of freedom of speech; to identify limits of freedom of speech; to support constitutional guarantees regarding freedom of speech; to develop critical thinking and analytical skills.

Procedure

Divide the class into groups of four students and assign each student primary responsibility for answering one of the four questions for the case assigned to their group. Give each group one case and ask students to analyze it and respond to their question. After each student responds to his/her question, the group should discuss that question to develop the best possible response. Students should be certain to have evidence to support their argument.

After each group has discussed its four questions, conduct a general class discussion of the three cases by considering the four questions associated with each case. List and define any legal terminology you may use. Emphasize that freedom of speech isn't license to say whatever you want whenever you want to say it, but rather that there are times when freedom of speech conflicts with other rights.

Case 1

Libel is publishing a false statement about someone which damages his/her reputation. Public officials are accorded less protection from libel. They must prove that the statements were not only false and damaging, but that they were also made with either malice or reckless disregard for the truth. In March of 1960, *The New York Times* ran a full-page advertisement calling for support of blacks protesting civil rights issues in the South. It described specific abuses and activities in Montgomery, Alabama. For example, it said blacks faced an "unprecedented wave of terror," and went on to describe police harassment of Dr. Martin Luther King. No specific names were mentioned. The ad cost $4,800 and was placed by a gentleman who was known to the *Times* as a responsible person. However, the ad contained numerous inaccuracies. For example, police had been called to a college campus, but had never surrounded it and the campus dining hall had never been locked.

L. B. Sullivan, commissioner of police in Montgomery, said that some of the incidents described happened before his tenure in office. In addition, he contended that people who knew him associated him with the ad. Some had indicated that his activities threatened their friendship and that if it were their choice he would not be rehired as police commissioner. Sullivan sued the *Times* for libel.

STUDENT QUESTIONS

1. What would be the difference between you taking space in the local paper to say derogatory things about your next door neighbor and criticizing the mayor of the city for neglecting his duties.
2. Is it necessary to prove that every statement in a signed editorial or ad be true before the paper prints it? What would be the effect of such a policy on freedom of the press?
3. When he assumed the office of commissioner, did Sullivan relinquish to some degree any of his rights?
4. What are the advantages of a totally free press? The disadvantages?

Case 2

Feiner v. New York (1951), 340 U.S. 315 (1951), is the case of the unpopular speaker.

Feiner began making a speech at 6:30 p.m. on a city street corner. He wanted to publicize a political meeting to take place that evening. A crowd of about 80 people had gathered, along with two police officers.

In the speech, Feiner referred to the president as a "bum," and called the mayor "a champagne-sipping bum." Then he said that "minorities don't have equal rights; they should rise up in arms and fight for them."

As Feiner continued, there was some pushing and shoving in the crowd. One listener told the police officers that if they did not get Feiner "off the box," he would do it. Others supported Feiner's position. The police officers told Feiner to stop, but Feiner continued anyway. Feiner was arrested for disorderly conduct.

STUDENT QUESTIONS

1. Was Feiner's speech likely to produce an immediate danger of disorder?
2. Who were the police officers protecting? Feiner himself? Feiner's expression? The general public?
3. Who should have been arrested – Feiner or the listener who made the threat?
4. If Feiner had talked only to a supportive audience should he have been arrested for criticizing the President?

Case 3

Burning the American Flag.

On June 6, 1966, Street was listening to his radio, when a news report told of the shooting of James Meredith, a Southern civil rights leader, by a sniper. Angered, he took out a folded American flag, which he had displayed on national holidays, and walked to an intersection. There, in the presence of about thirty people, he burned the flag. A police officer observed him and heard him say: "We don't need no damn flag." When the officer asked him whether he had burned the flag, he replied:

"Yes, that is my flag; I burned it. If they let that happen to Meredith, we don't need an American flag."

Street was tried under a New York law which makes it a misdemeanor "publicly [to] mutilate, deface, defile, or defy, trample upon, or cast contempt upon either by words or act [any flag of the United States]."

He was found guilty and given a suspended sentence. He appealed on the ground that his free speech rights under the First and Fourteenth Amendments had been violated.

STUDENT QUESTIONS

1. Was the burning of the flag a form of expression?
2. Or was burning the flag an action which the state had a right to regulate? What is the distinction between expression and action?
3. Would the First Amendment protect burning a draft card as a protest against the Vietnam War?
4. What values are protected by the law against defiling the flag? What values are asserted by the act of burning the flag as a political protest? Which set of values should prevail? Why?

Case 1: Court Decision

In *New York Times v. Sullivan*, 376 U.S. 254 (1964), the Court held that a public official could recover damages for a defamatory falsehood *only* if the libelous material was deliberately false—made with malice—or if the statement was made with indifference to the possibility of its falsehood. They did not feel that this was the case in the instance of *New York Times v. Sullivan.*

Futhermore, the Court emphasized the need for citizens in our society to have the privilege of criticizing the government and public officials, pointing to the "profound national commitment that debate on public issues should be uninhibited, robust and wide open, and that may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."

The Court concluded its statement by saying:

> As to the *Times*, we similarly conclude that the facts do not support a finding of actual malice. . .We think the evidence against the *Times* supports at most, a finding of negligence in failing to discover the misstatements, and is constitutionally insufficient to show the recklessness that is required for a finding of actual malice. . .
>
> We also think the evidence was constitutionally defective in another respect: it was incapable of supporting the jury's finding that the allegedly libelous statements were made "of and concerning" [Sullivan]. [Sullivan] relies on the words of the advertisement and the testimony of six witnesses to establish a connection between it and himself. . .

Case 1 decision from: Institute for Political and Legal Education, *Individual Rights.*

Case 2: Court Decision

Law enforcement authorities may require a speaker to stop making a speech on a public street when the authorities determine that the speech is a clear danger to preserving order.

REASONING OF THE COURT

The Court believed that Feiner's speech passed the limits of persuasion and instead was an incitement to riot. Because there was a clear and immediate danger of riot and disorder, the Court held that the officers must be allowed to order that Feiner stop making his speech. According to the Court, it was the duty of the officers to maintain order on the streets. Looking to the particular facts of this case, the Court said that because Feiner encouraged hostility among the audience, interfered with traffic on the public streets, and ignored the officer's order to stop talking, his conviction for disorderly conduct did not violate his constitutional right of free expression.

Justice Black strongly disagreed in a dissenting opinion. The justice shifted his focus to the unpopular speaker. According to Justice Black, Feiner had been arrested for expressing unpopular views. He asserted the police officers had a duty to protect Feiner during his speech rather than to arrest him, since Feiner was exercising his constitutional right of free expression. In his view, it was the duty of law enforcement authorities to protect a person exercising his constitutional rights from those who threatened to interfere.

Case 2 decision from: *A Resource Guide on Contemporary Legal Issues. . .For Use in Secondary Education*, Phi Alpha Delta Law Fraternity, International. Available from publisher. Used with permission.

Case 3: Court Decision

In *Street v. New York*, 394 U.S. 576 (1969), the Court was badly split—a 5 to 4 decision. Writing for the majority, Justice Harlan overruled Street's conviction on the ground that he was "punished merely for speaking defiant or contemptuous words about the flag." The Fourteenth Amendment prohibits states from punishing those who advocate peaceful change in our institutions. The words used by Street were not "fighting words," nor did they shock anyone in the crowd. What Street did was to publicly express his opinion about the flag. Justice Harlan concluded on this note:

> We add that disrespect for our flag is to be deplored, no less in these vexed times than in calmer periods of our history. . . Nevertheless we are unable to sustain a conviction that may have rested on a form of expression, however distasteful, which the Constitution tolerates and protects. . .

It is on this very note that the dissenters parted company with the majority. Chief Justice Warren and Justices Black, Fortas, and White saw the issue as one involving action—the burning of the flag. Each felt that a state has the right to prohibit and punish those who desecrate the flag. Justice Fortas reasoned as follows:

> One may not justify burning a house, even if it is his own, on the ground, however sincere, that he does so as a protest. One may not justify breaking the windows of a government building on that basis. Protest does not exonerate lawlessness. And the prohibition against flag burning on the public thoroughfare, being valid, the misdemeanor is not excused merely because it is an act of flamboyant protest.

Case 3 decision from: Isidore Starr's *The Idea of Liberty* (St. Paul, Minn: West Publishing Company, 1978. Available from publisher. Used with permission.)

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Come to the First Amendment Fair/Secondary

Ann Blum

Of course the right to assemble and speak out is a right of citizens, but we shouldn't forget to look at the other side of the coin, and see it as a limitation—on government. As Paul Murphy points out in *Update*, Spring, 1986, constitutions preserve the rule of law by preventing government from taking certain actions. This strategy will convey the point by focusing in on the standards that may limit government in the free speech area. The strategy will take one or two class periods. It will help students

- identify the issues posed in major Supreme Court cases pertaining to the First Amendment rights of free speech and freedom of assembly and association
- explain the protections given to and limitations allowed on these rights by the courts
- explain that governments must follow certain rules in dealing with speech and assembly issues
- develop skill in reasoning by analogy and in decision-making
- discuss the importance of freedom of association

Procedures

Distribute both handouts (pp. 12-13) to students. Handout 1, "Decisions for the Fair Director," explains the activity. The second handout, "Relevant Court Cases," provides the students with information for decision-making. Students can do the exercise individually, with written responses, or in small groups with a reporter for each group.

After completing the "Decisions for the Fair Director" activity, students should discuss and evaluate their decisions. Use the "Commentary on Decisions for the Fair Director" for this discussion/evaluation. An attorney versed in constitutional law could contribute greatly to the discussion of the situations, cases, and issues.

After the review of student decisions, ask the class

- What are the main issues in these cases and situations?
- What limitations have the courts allowed on the rights to associate and assemble?
- What protections have the courts clearly given for the rights to assemble and associate?
- Some of the situations evoke what is called the "heckler's veto." Ask students if they think it is right to give way to threats by canceling events. What should be done?
- What rules, if any, might the director have established beforehand to regulate the problems confronted?
- Should any of the groups have been excluded? Why or why not?
- Why is freedom of association so important? What are some threats to it?

Commentary on Decisions for the Fair Director

1. The decision in *Hague v. CIO* suggests that this is not good advice. The city ordinance appears to be a vague one, without narrow standards, that the courts would probably hold unconstitutional. Without such standards, any action to abridge rights taken by a fair director would be arbitrary and also unconstitutional.
2. Decisions on the "public enemy" laws suggest that the director could not turn down the request of the Super Sniffs without proof that they were going to use their booth to plan or commit a crime. People have a right to associate as long as their purposes are not criminal or disruptive.
3. The decision in the Skokie case indicates that this action would not be accepted by the courts. What if the director required such a bond of each exhibitor? This would probably be accepted by the courts if the amount of the bond were reasonably set—but the issue is still an open one. Note that governments have sometimes canceled events rather than hold them when associations like the Klan, held to be undesirable, want to take part.
4. Definitely not. Although the cases are more extreme, note decisions concerning right to assembly in *Edwards v. South Carolina, Feiner v. New York, Gregory v. City of Chicago*, and the Skokie cases. The director should instead act to alert police to assure protection for the union exhibitor if it is necessary.
5. The director should not close the booth. As cases indicate, it is not illegal per se to be a member of the Communist Party. In regard to the pamphlets, note that the courts have held that abstract recommendations for political violence, like these, are protected by the First Amendment. See decisions in *DeJonge v. Oregon* and Communist Party membership cases.
6. There do not appear to have been any grounds—except dislike—for refusing this group a booth (see *Nietmotko vs. Maryland*). It is wiser to allow them to stay even though they had been turned down. This is a very complicated legal issue—the courts would want to examine the procedural scheme set up for the permit procedure, the time available for judicial remedies, etc. Under the circumstances, the director couldn't assume *Poulos v. New Hampshire* would be a precedent.
7. *Edwards v. South Carolina, Feiner v. New York,* and *Gregory v. City of Chicago* are all relevant to the issues posed. The cases indicate that the first responsibility of the police is to protect the speakers and control the hecklers. If all else fails, then the speaker can be removed.

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Decisions for the Fair Director (Handout 1)

You are one of the directors of a fair of local associations to be held in the park in front of your city's courthouse. The purpose of the fair is to celebrate our American rights to the First Amendment freedoms of expression and association. There is no thought or provision for excluding any organization. Through advertisements, you invite associations to apply for space for fair exhibition booths. Associations can use the booth spaces for displays or simple programs explaining and touting their organizations.

Unfortunately, problems about participation arise almost immediately. You are faced with a series of dilemmas. Obviously, you don't want to step on the rights of any group. On the other hand, you don't want the fair to be a series of disturbances. In dealing with the situations described below, use the handout "Relevant Court Cases" to guide your decisions. For each situation, record your decision and your reasons for making it. Cite any relevant cases.

Situations

1. The American Nazi Party imediately requests a booth. Because of the Jewish population of the city, you are very uneasy. A fellow fair director suggests you refuse the party a booth on the basis of a city ordinance that says permits for street meetings or similar gatherings can be refused "to prevent riots and disturbances." Should you follow her advice?
2. The Super Sniffs, a group widely suspected of being drug smugglers and dealers, requests a booth. This is another group you don't want to participate. What can you do, if anything, to refuse them space?
3. A request from the Ku Klux Klan for space makes you wonder why you accepted this job. You are advised to ask them to post a bond of $100,000 to participate, because this will surely keep them out. Should you do this? Why or why not?
4. A major issue in your town is the unionization of the local hat factory. The union requests a booth—and you receive several threats by phone that there'll be trouble if those union blankety-blanks are there. Because of these threats, can you refuse them space?
5. You receive a request for a booth from the local chapter of the Communist party. You allow them space and then, immediately after the fair opens, a man bursts into fair headquarters shouting that you should go to jail for allowing the Commies to participate. He says they even have pamphlets—he waves a handful of dull-looking papers at you—that indicate the overthrow of the government may be necessary to attain their ends. Those, too, are illegal, he shouts. Is he right? Should you close the booth?
6. You refuse a booth to what you regard as a very pushy religious group. They are particularly offensive because they never bathe and rarely change clothes. They come anyway and set up a booth. You ask them to leave; they refuse. You try to decide whether to ask the police to eject them. Should you do this?
7. A hostile crowd gathers around the booth of a pro-choice group. They become loud and jostling. Police advise you that trouble may result. You ask the pro-abortion group to leave. When they refuse, the police arrest them for breaching the peace. Was this the way to handle the situation? Would it have made a difference if the crowd had begun to throw bottles and rocks?

Relevant Court Cases (Handout 2)

COMMUNIST PARTY MEMBERSHIP CASES

The question of whether membership in the Communist Party can be made illegal by a statute was confronted by the Supreme Court in the late 1950s and early 1960s. In *Yates v. United States* (354 U.S. 298 (1958)), the Court marked a difference between advocating abstract doctrines to overthrow the government and advocating action. The former was held to be permissible but not the latter. (Or, as the Court said in *Brandenburg v. Ohio* (395 U.S. 444 (1969)), a case concerning a Ku Klux Klan speaker, the "mere abstract teaching" of a moral need to resort to force and violence is not the same as "preparing a group for violent action and steeling it to such action." Such teaching is protected by the First Amendment.)

In *Scales v. United States* (367 U.S. 203 (1961)), a divided Court struggled with the recognition that the party has both legal and illegal aims. Being a "knowing" member in an organization advocating overthrow of the government by force could be a felony, the Court said. But being a member "for whom the organization is a vehicle for the advancement of legitimate aims and policies" should not be a crime.

DEJONGE V. OREGON 229 U.S. 353 (1937)

In 1934 Dick DeJonge spoke at a meeting of the Communist Party in Portland, protesting actions used to break a longshoreman's and seaman's strike. He was arrested and convicted for "assisting in the conduct of a public meeting" held under the auspices of the Communist Party. His action was said to violate an Oregon law that prohibited advocating violence as a means of political reform.

The Supreme Court reversed the decision, holding the state law unconstitutional. The Court said that "peaceable assembly for lawful discussion cannot be made a crime." Nor can persons assisting in the conduct of such meetings be "branded as criminals on that score."

Relevant Court Cases (Handout 2)

EDWARDS V. SOUTH CAROLINA 372 U.S. 229 (1963)
In early 1961, about 190 black students marched to the park-like grounds of the state capitol in Columbia to protest segregation laws. Law enforcement officers told them as they entered the grounds that they had a right to do so as long as they were peaceful. The demonstrators marched, listened to a speaker, and sang—all in an orderly way. There was no obstruction of traffic. Onlookers gathered, but no one actually caused trouble. However the police and city manager were uneasy. The demonstrators were warned they would be arrested if they didn't disperse in 15 minutes. They refused and were arrested and convicted under the state breach-of-peace statute.

The Supreme Court, in a 8-1 decision, held the state statute vague and indefinite, upholding the demonstrators' rights under the First and Fourteenth Amendments to protest peaceably on public grounds.

FEINER V. NEW YORK 340 U.S. 315 (1961)
Feiner, a Syracuse University student, was addressing a crowd of 70 to 80 people on a city sidewalk. Some of the audience were hostile, and the police, summoned by a complaint, asked Feiner to stop talking after at least one threat of violence. Feiner refused and was arrested and convicted for violating the state's disorderly conduct law.

The Supreme Court, by a 6-3 margin, upheld the conviction. The majority opinion made clear that Feiner was not arrested for making his speech but because of audience reaction. His speech had created a clear and present danger of riot or disturbance. The police, the Court said, could act in such circumstances.

GREGORY V. CITY OF CHICAGO 394 U.S. 111 (1969)
Accompanied by police, Dick Gregory led about 85 marchers to the home of the mayor to protest delays in desegregation of public schools. Crowds gathered and began to hurl not only threats and obscenities but rocks and eggs. The marchers remained orderly. The police asked the protesters to disperse. When they refused, they were arrested and charged with violating Chicago's disorderly conduct ordinance.

On appeal, the Supreme Court overturned the decision. An orderly protest march, it said, falls under protection of the First Amendment. The city's ordinance, the Court held, was too vague.

HAGUE V. CIO 307 U.S. 496 (1936)
Frank Hague, mayor and political boss of Jersey City, New Jersey, was anti-union. When the Committee for Industrial Organization (CIO) requested a permit for a street meeting, it was refused under a city ordinance, which said a permit could be turned down to prevent "riots, disturbances, or disorderly assemblages."

In a 7-2 ruling, the Supreme Court declared the ordinance void. The reasoning was that without narrow standards (or guidelines), it allowed one person to suppress the rights of free speech and assembly in a public place solely on the basis of his or her opinion that the activity might cause a disturbance.

NIEMOTKO V. MARYLAND 340 U.S. 168 (1951)
A group of Jehovah's Witnesses were refused a permit to hold Bible discussion meetings in the town park. There was no ordinance, but local custom required a permit be obtained from the park commissioner, with appeal on refusal to the city council. The Jehovah's Witnesses held the meeting without a permit. They were arrested and convicted for disorderly conduct.

The Supreme Court reversed the decision. It said that a permit requirement is invalid as a prior restraint "in the absence of narrowly drawn, reasonable and definite standards for the officials to follow." The only apparent reason for refusal of the permit in this case was dislike.

POULOS V. NEW HAMPSHIRE 345 U.S. 395 (1953)
Like *Niemotko v. Maryland,* this case concerned denial of a permit for a park meeting for a group of Jehovah's Witnesses. This group also held their meeting anyway.

In this case, the Supreme Court, however, upheld the conviction and fine of Poulos. It held that the ordinance was valid, but the decision to deny the permit was arbitrary. However, Poulos, it said, had judicial remedies available to question the council's decision. He did not use them. To take the law into one's own hands, it said, is a dangerous course of action.

PUBLIC ENEMY CASES
In the 1920s and 30s, faced with very visible gangsterism, several states enacted so-called "public enemy" laws. These declared persons gangsters who belonged to groups consisting of people who had been convicted of crimes or ordinance violations. The courts found the basic terms of these laws too vague. In its ruling on a New York law, the New York Court of Appeals said that a state must prove that an association of "evil-minded people" are planning or doing something unlawful. "The consorting alone is no crime." (*People v. Pieri,* 269 NY 315, 199 N.E. 495 (1936)).

AMERICAN NAZI PARTY V. VILLAGE OF SKOKIE 373 N.E.2d. 21 (1978)
In 1977, the city of Skokie, Illinois, sought to prevent a march of the American Nazi Party through the predominantly Jewish community. It tried to do this by requiring them to post $300,000 bond for a parade permit. A federal appeals court said that a community could not use its parade-granting power as a means of suppressing free speech and assembly. They said the Nazis could march without posting the bond. Having gained the right, the Nazis decided not to hold their demonstration in Skokie.

Marshall Croddy

Going beyond Darwin

The new wave in teaching evolution. . . .

> And the LORD God formed man of the dust of the ground, and breathed into his nostrils the breath of life, and man became a living soul.
>
> —Genesis 2:7

There hasn't always been a dichotomy between the teachings of God and the teachings of man. In the early days of American education, religion and secular subjects went hand in hand. Biblical accounts of creation and Noah's Ark were treated as actual fact. One of the earliest textbooks used in America, the *New England Primer*, included this question and answer:

Q: What is the work of Creation?

A: The work of Creation is God's making all things of nothing, by word of His power, in the space of six days, and all very good.

Religious teaching was deemed not only an appropriate, but a necessary part of a child's education.

When mid-nineteenth century trends—industrialization, immigration and compulsory public education—began to erode the homogeneous nature of America's classrooms, Protestant religious teachings declined. Then in 1859 the English naturalist Charles Darwin published his germinal work, *The Origin of the Species*. Darwin's theory of evolution spurred an intellectual revolution and contributed to a religious counterrevolution led by Christian fundamentalists.

The fundamentalist movement has had a number of manifestations over the years, but central to all have been the literal interpretation of the Bible and the conviction that the Scriptures contain no errors. These doctrines place fundamentalists in mortal struggle with all those who advocate non-Biblical explanations for the creation of earth and humanity. American classrooms became and remain a major theater in this ongoing struggle.

Round One: Anti-Evolution Legislation

Throughout the 1920s fundamentalists actively pushed for state laws prohibiting the teaching of evolution in the public schools. During this period, bills to this effect were introduced in 20 states, setting the stage for one of the most publicized trials in American history.

In 1925, Tennessee adopted its famous "monkey law," making it a crime to teach in the state's public schools ". . . any theory that denies the story of the Divine Creation of Man as taught in the Bible, and to teach instead that man has descended from a lower order of animals. . . ."

John T. Scopes, a biology teacher from Dayton, Tennessee, was soon prosecuted under the statute. After a sensational trial punctuated by the histrionics of Clarence Darrow for the defense and William Jennings Bryant for the prosecution, Scopes was convicted and fined $100. National headlines blared the results; both sides in the debate claimed victory. In a later decision the Supreme Court of Tennessee overturned the Scopes conviction on procedural grounds: it should have been the jury, not the judge, that set the fine (*Scopes v. Tennessee*, 289 SW. 363, 1927). Because Scopes was no longer employed by the state, the court directed that an order not to further prosecute be entered, in the interests of "the peace and dignity of the state." Nevertheless, the court sustained the constitutionality of the Tennessee law.

Three years later, Arkansas passed by popular initiative a similar, if somewhat muted law. Its version removed the reference to "the story of the Divine Creation of man" but still banned the teaching of evolution in any institution supported by public funds. In addition, it forbade public schools to use any "textbooks that teach the doctrine or theory that mankind descended or ascended from a lower order of animal." Violation of the law carried misdemeanor penalties.

For nearly 40 years the law stayed on the books, never enforced and never challenged.

In 1968 the case of *Epperson v. Arkansas*, 89 S. Ct. 266, reached the U.S. Supreme Court.

Susan Epperson, a Little Rock Central High School biology teacher, had initiated action to declare Arkansas' anti-evolution statute a violation of the First and Fourteenth Amendments. The U.S. Supreme Court agreed.

"Government in our democracy, state and national," noted the Court, "must be neutral in matters of religious theory, doctrine and practice. . . . The First Amendment mandates governmental neutrality between religion and religion and between religion and nonreligion."

The Court ruled that the state's right to prescribe the curriculum does not carry with it the right to impose criminal penal-

ties for teaching a scientific theory for the sole reason that it is deemed to conflict with the beliefs of a particular religious doctrine. To do so conflicts with ". . . the constitutional prohibitions respecting an establishment of religion or prohibiting the free exercise thereof."

Round Two: Scientific Creationism

Although the *Epperson* decision settled one legal question, it did not end the controversy. Faced with the widespread teaching of Darwinism in schools, fundamentalists adopted a new approach. In the late 1960s and early 1970s several organizations were formed to promote the idea that the Book of Genesis presents a theory supported by scientific evidence. The terms "creation science" and "scientific creationism" were adopted as descriptive of these studies. The creationists argue that the scientific record of fossil gaps proves that plants and animals did not evolve over millions of years. Instead they had been completely formed by God and were frozen in time by the deposits caused by Noah's flood as reported in the Bible. Creationists claim that Darwinian evolution is also a "religion"—one invented by the secular humanists. Furthermore, creationists generally have adopted the view that there are only two positions on origins: one believes in Genesis or in evolution.

A number of groups have organized to promote creationism. Perhaps the leading creationist organization is the Institute for Creation Research (ICR) in San Diego, California. ICR is affiliated with a fundamentalist church and college and actively tries to affect public policy. ICR and others lobby for legislation and administrative rules which will give "equal time" for creation science in the public schools. Creationists maintain that it is unfair to teach only one scientific theory of earth's origins. Evolution theory should be taught, argue the creationists, only if creation science is taught along with it.

Although the U.S. Supreme Court has not yet ruled on this issue, the following case summaries give an indication of how this approach has fared with the lower courts.

The Tennessee "Genesis" Law. In 1973, Tennessee passed a law which banned textbooks dealing with evolution unless they disclaimed it as a "theory" and not "scientific fact." Any textbook that did deal with "the origin and creation of man" also had to give an equal amount of emphasis on other theories including, but not limited to, the Genesis account in the Bible. The act excluded the necessity of teaching any "occult or satanical beliefs of human origin" and defined the Bible as a "reference work," not a text. Furthermore, the Bible was not required to carry the disclaimer.

Applying the three-part "Lemon Test" the U.S. Court of Appeals (Sixth Circuit) found the statute violated the Establishment Clause of the First Amendment. It failed the first and second tests (demonstrating a secular legislative purpose) because its only basis was to give preferential treatment to the Bible. It failed the third because it fostered "excessive governmental entanglement" with religion. The court found it would be impossible for Tennessee textbook authorities to determine which religious theories were "satanical or occult" without seeking to resolve impossible theological debates on an ongoing basis. The case is *Daniel v. Waters*, 515 F.2d 485 (1975).

Creation Science Law Cases. The *Daniel* case did not settle the matter. In 1981 Arkansas passed a new law which mandated that "Public Schools within this state shall give balanced treatment to creation science and to evolution science." The statute was shorn of all references to Genesis, the Bible or religion. Instead, it defined creation science in terms of its doctrines: the sudden creation of the universe from nothing, the belief in a worldwide flood, separate ancestry for man and ape and perceived failings in the theory of natural selection. Still the law was challenged on First Amendment and due process grounds.

After a lengthy trial in U.S. district court, Judge Overton issued a scholarly 38-page memorandum in the case of *McClean v. Arkansas Board of Education*, 5297 F. Supp. 1255 (1982). In effect, he found that creation science is not science, it is religion. He noted the similarity between the Genesis stories and the statute-defined tenets of creation science. He described the role of fundamentalist/creation science advocates in developing the legislation. He demonstrated that creation science fails to employ the most basic scientific methods or concepts.

"Since creation science is not science," ruled the judge, "the conclusion is inescapable that the only real effect of Act 590 is the advancement of religion. The Act therefore fails both the first and second portions of the test in *Lemon v. Kurtzman*, 403 U.S. 602 (1971)." Furthermore, Judge Overton held that the statute would impossibly entangle the state with religion because of the necessity of screening creation science texts for religious references.

The Texas Textbook Controversy. Judge Overton's decision has had even wider impact. It was cited with authority in the opinion of the attorney general of Texas, who had been asked by the Texas legislature to evaluate the constitutionality of textbook adoption standards requiring that texts treating evolution identify it ". . . as only one of several explanations of the origins of humankind." Because Texas is a leading buyer of texts, these requirements were having an effect on the coverage evolution received in texts throughout the United States. Attorney General Jim Mattox concluded that the standards were clearly motivated by "religious considerations" rather than a dedication to scientific truth ". . . and therefore violated the Establishment Clause of the First Amendment."

Creation Science After *Lynch*

How will creation science fare after the U.S. Supreme Court "nativity scene" decision in *Lynch v. Donnelly*, 104 S.Ct. 1355 (1984)? That decision departed from the three-part *Lemon* test in finding no violation of the Establishment Clause. Though not one of the creation science cases has yet reached the Supreme Court, one federal district court case suggests an answer.

The U.S. District Court for the Eastern District of Louisiana weighed a Louisiana statute requiring "Balanced Treatment for Creation-Science and Evolution-Science in Public School Instruction." The law: (1) applied to texts and lectures, and (2) defined creation science and evolution science in identical language: ". . . the scientific evidence for creation (evolution) and inferences from those scientific evidences." No school was required to give any instruction on the "subject of origin" but if it did, both must be taught and with "balanced treatment."

In spite of the legislative attempts to avoid the constitutional flaws of previous statutes, the district court struck down the law, holding:

> Whether one applies the "three-pronged" test of *Lemon*, the less rigid analysis of *Lynch*, or the views of those who contend that the

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First Amendment does not prohibit neutral state activity of a religious nature, the Louisiana statute violates the Establishment Clause. Because it promotes the beliefs of some theistic sects to the detriment of others, the statute violates the fundamental First Amendment principle that a state must be neutral in its treatment of religions. The First Amendment, as applied to the state by the Fourteenth, provides that the state "shall make no law respecting an establishment of religion." The Balanced Treatment for Creation-Science and Evolution-Science in Public School Instruction Act is a law respecting an establishment of religion. (The case is *Aguillard v. Treen*, U.S. District Court, E.D. of Louisiana, Civil Action No. 81-4787 (1985)).

Whether the U.S. Supreme Court will follow this reasoning remains to be seen. Only one thing is certain. The societal debate started in 1859 with the publication of the *Origin of the Species* is not over. Neither is the legal debate. Future courts will be called on to evaluate future laws cleverly crafted. Yet, teachers, in the words of Clarence Darrow, will continue to "teach that the earth is round and that the revolution on its axis brings day and night, in spite of all opposition."

For Classroom Use

1. Texas Attorney General Mattox in his legal opinion to the state senate suggested that the only way to avoid First Amendment infringments would be to draft a statute of "general application to all scientific inquiry which does not single out for its requirement of a disclaimer a single theory of any one scientific field" or mandate "inquiries which lie totally outside the realm of science." Given the reasoning in *McLean* and *Aguillard*, would this suffice? What other constitutional problems might be raised?

2. Most of the evolution/creation cases have been decided on the basis of the Establishment Clause of the First Amendment. What about a Free Exercise issue? Consider the following:

Mary Ridgeway has been raised in a devoutly fundamental Christian home. She, her parents and their church believe that "Darwinism" is a product of Satan's work on earth. Mary is an honors student at her high school and wants to major in computer studies in college. Her college prep major requires one year of high school biology, which provides a significant focus on "natural selection." Mary asked to be excused from these readings and discussions. Her biology teacher agreed, but warned her that the materials covered would be tested and her final grade would suffer. School district policy backs the teacher's position. Mary and her parents want the school board to adopt a policy that will accommodate their religious beliefs and not penalize Mary. They are willing to file a lawsuit, if necessary.

Activity. Have your students imagine that they are members of a law firm consulted by the Ridgeways. Working with other members of the staff, it is their job to advise the Ridgeways of their legal rights in this matter.

- Divide the class into groups of three or four students.
- Present and/or review the materials covered in this article and the one by Isidore Starr. (Emphasize "free exercise" standards.)
- Have students complete and make class presentations on one or more of the following:

  1. Discuss and draft a one-page memorandum listing legal reasons in favor of the Ridgeways' position.
  2. Discuss and draft a suggested school district policy that would accomodate the religious views of the Ridgeways.

Discuss each of the student presentations in terms of the First Amendment issues raised. □

Liberty

(continued from page 3)

Post repeated this experiment – gaining only 19 out of 161 possible signatures.

Why? People said they feared they would lose their jobs, be called communists, or otherwise encounter future harassment as a result of signing such a document.

In the 1970s this experiment was repeated in Miami by the *Associated Press*. A typed copy of the Declaration of Independence was shown to people and they were asked to sign. Only one out of 50 people agreed to sign. Comments ranged from calling it "commie junk" to saying it was "the work of a raver."

This right has been clouded by rumors and beliefs that government agencies compile records on people who sign petitions. Has this historic right to petition been diminished as a way of protesting the grievances of minorities?

In addition, the freedoms of association and assembly have frequently been challenged. Should employees have to answer the question of whether they have ever "lent aid, support, advice, or counsel or influence to the Communist Party?" Can a city council require all public school teachers to submit a list of all the associations to which they belong or contribute to each year? Can a law enforcement official record the license numbers of cars that belong to people attending a meeting of a generally unpopular political group?

All of these would seem to be abridgments of our right to association. Yet, though the Supreme Court declared some loyalty oaths to be unconstitutional, an oath stating that "I will oppose any attempt to overthrow the government by force, violence or unconstitutional means" was found to be constitutional.

Likewise, though the Supreme Court ruled that the need for teachers to declare which associations they belonged to be unconstitutional, the Court has held that a legislative committee acting under proper authorization can investigate an individual's associational relationships, "if a compelling state interest" justifies it.

In looking at these liberties today, we ask if they are what the framers intended them to be? Or have they been limited in times of crises and changed to take into account the many changes in our society?

Conclusion

This year our Constitution will be 200 years old – it is now the oldest living written constitution of a nation-state. The idea of liberty is much older. "Proclaim liberty throughout the land and unto all the inhibitants, thereof" – is the message found in Leviticus and inscribed on our Liberty Bell. The odyssey of this idea from Biblical times to our own era has been marked by the tragedies of persecutions and prosecutions and by the triumphs of the human spirit through landmark documents and judicial victories. The future of the idea of liberty, like all great ideas in history, will be determined by the courage of those who understand what it means to live in a country where liberty is a hostage to despotism. □

The First Amendment contains two guarantees that relate to religion. The first of these prohibits government from establishing religion. But what exactly does that mean? A narrow construction of the establishment clause of the First Amendment would restrict its meaning to prohibiting establishment of a state church. However, in the first major establishment case brought before the Supreme Court, *Everson v. Board of Education*, 330 U.S. 1 (1947), the justices interpreted the clause in a broad manner. Justice Hugo Black's opinion in the case enunciates this construction with clarity:

> The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect, 'a wall of separation between church and State.'

Federal courts have considered a wide variety of issues related to the establishment clause. These include:

- state aid to religion
- church intervention in state affairs
- state intervention in church affairs
- religion in public schools
- state aid to denominational schools.

Generally church and state are kept separate, but there are exceptions, such as legislative and military chaplains, chapel attendance at military academies, and "In God We Trust" on U.S. currency. The state also intervenes in some church affairs; for example, presidential proclamations of Thanksgiving, fasting, and prayer, and ambassadorial representation to the Holy See.

The issue of religion in public schools is of particular interest to educators, pupils, and parents. Topics that have emerged include Bible-reading and prayer in schools, teaching of evolution v. creationism, released time, and observation of holy days by schools. The immediacy of the issue is reflected by the proposed constitutional amendment regarding prayer in schools. Tuition tax credits for parents of students in private sectarian schools is also an issue of great current interest.

Procedures

The time of this lesson is one class period. Its objectives are:

- To identify and examine issues related to the establishment clause of the First Amendment.
- To consider the arguments and take a position on an issue.
- To trace the history of the interpretation of the establishment clause.

Divide the class into groups of five to six students. The question of state-mandated, sponsored, or ritualized group prayer came before the Supreme Court in the New York Regents school prayer case (*Engel v. Vitale*, 370 U.S. 421, 1962). The case dealt with a brief, nondenominational prayer authorized by the state. Below is a summation of the major arguments pro and con, extracted from the judicial record of the case. Give each group a copy of the arguments. (You may wish to have students research this and other cases before considering the arguments. See recommended readings.)

PRO PRAYER IN PUBLIC SCHOOLS

- Recognition of Almighty God in public prayer is an integral part of our national heritage.
- The Constitution of the U.S. is incapable of being so interpreted as to require that the wall of separation of church and state become an iron curtain.
- Judicial, legislative, administrative, and textual writers have agreed that what the framers of the First Amendment had in mind did not project the idea of a wall of separation between church and state into a "government hostility to religion" which would be "at war with our national tradition."
- A few seconds of voluntary prayer in schools acknowledging dependence on Almighty God is consistent with our heritage of securing the blessings of freedom, which are recognized in both the federal and state constitutions as having emanated from Almighty God.

CON PRAYER IN PUBLIC SCHOOLS

- Use of public schools and the time and efforts of teachers and staff of the schools violates the establishment clause.
- Saying prayers as teaching of religion and religious practices is contrary to the belief of many Americans and is offensive to them.
- Saying prayers results in exercise of coercion by school officials.
- Saying prayers as a sectarian or denominational practice favors one or more religions or religious practices over others and religion over nonbelief.
- Saying prayers results in divisiveness.
- Saying prayers is contrary to the prohibition against establishment, and the right to free exercise and the exercise of religion without discrimination or preference.
- Saying prayers exceeds the statutory authority of the schools and is in violation of their statutory duties.

Ask students to discuss each argument thoroughly and then take a position, pro or con. Encourage the group to reach a consensus rather than take a vote. A recorder from each group should report to the class on the group's position and the reasons for taking that position.

A similar exercise would be appropriate for such issues as compulsory flag salute, reference to God in the Pledge of Allegiance, or many other issues.

Free Exercise of Religion

The second guarantee relates to freedom of worship. Although the British colonies of North America were populated by many immigrants seeking a haven from religious persecution, on the eve of the American Revolution state-established religions appeared quite secure. However, a logical extension of the social contract theory that dominated eighteenth-century American political thought is that religious freedom is a natural right.

In 1776, the Virginia Convention adopted a new state constitution and a bill of rights, which included an article written by George Mason and amended by James Madison guaranteeing the free exercise of religion. In the years following the Revolution, under the Articles of Confederation, many states adopted constitutions or acts of toleration that moved to separate church from state and guarantee some measure of religious toleration among Christians. Of the thirteenth original states, only Virginia and Rhode Island moved beyond toleration of dissenting churches to guarantee religious freedom. When the Northwest Ordinance of 1787 was adopted, however, a bill of rights was included that proclaimed religious freedom in the territories.

At the Constitutional Convention, no statement was made concerning religious freedom. The only time the subject of religion specifically arises in the Constitution is in Article VI. In setting qualifications for federal office, the representatives determined that "no religious test shall ever be required as a qualification to any office or public trust under the United States."

James Madison drafted a bill of rights for consideration by the first U.S. Congress. His original amendment pertaining to religion read: "The civil rights of none shall be abridged on account of religious belief, nor shall any national religion be established, nor shall the full and equal rights of conscience in any manner or on any pretext be infringed."

Procedures

The lesson on free exercise of religion can be done in one class period.

1. Ask students to review the Northwest Ordinance; the Constitution, Article VI, clause 3; and the First and Fourteenth Amendments to the Constitution. Share with students additional background information found in the introduction to this lesson.
2. Duplicate and distribute copies of the Senate debate to the students. (The notes on the debate on the First Amendment [then called article three], are from *Journal of Proceedings of the U.S. Senate, First Session, First Congress*, which was printed in 1820 by Gales and Seaton in Washington and was based on the original minutes of the clerk of the Senate.) Direct students' attention to the section beginning "On motion to amend article third..." Tell students that the Senate was debating a House resolution that was very similar to the wording of the First Amendment as we know it: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, nor shall the rights of conscience be infringed...." Several alternatives were proposed. Ask students to write the First Amendment as it would have been worded if any of the three alternative wordings had been adopted. Discuss what the reasons may have been for rejection of the alternative wordings and the pros and cons of the various wordings. Ask for a show of hands for the wording that the students favor. Share with them Madison's original wording and have them discuss its relative merits.
3. Ask students to define religious toleration and religious freedom and to distinguish between them.

Journal of the Senate

WEDNESDAY, SEPTEMBER 2, 1789

The resolve of the House of Representatives of the 24th of August, one thousand seven hundred and eighty nine, "that certain articles be proposed to the legislatures of the several states, as amendments to the Constitution of the United States;" was taken into consideration....

THURSDAY, SEPTEMBER 3, 1789

On motion to amend article third, and to strike out these words: "religion, or prohibiting the free exercise thereof," and insert "one religious sect or society in preference to others:"

It passed in the negative [i.e., failed].

On motion that article the third be stricken out:

It passed in the negative.

On motion to adopt the following, in lieu of the third article: "Congress shall not make any law infringing the rights of conscience, or establishing any religious sect or society:"

It passed in the negative.

On motion to amend the article, to read thus: "Congress shall make no law establishing any particular denomination of religion in preference to another, or prohibiting the free exercise thereof, nor shall the rights of conscience be infringed:"

It passed in the negative.

On motion to adopt the third article as it came from the House of Representatives:

It passed in the negative.

On motion to adopt the third article proposed in the resolve of the House of Representatives, amended by striking out these words, "nor shall the rights of conscience be infringed."

It passed in the affirmative...

These activities are adapted from The Constitution: Evolution of a Government, *a supplemental reading unit based on original source material and prepared by the National Archives. This and other National Archives units are available from SIRS, Inc. in Boca Baton, Florida.*

Our Freedom to Assemble and Associate/Grades 9-12

Ann Blum

"Congress shall make no law. . . abridging. . . the right of the people peaceably to assemble" states the First Amendment to the Constitution. But there has been less attention devoted to this right to assemble, or the related right to associate, than to the First Amendment's rights to freedom of press, speech, and religion.

It is not that these are new rights. The right to assemble is closely associated with the right to petition, which is provided for in the Magna Carta (1215). In the case of *U.S. v. Cruikshank* (92 U.S. 542 (1876)) Chief Justice Morris wrote, "The right of the people to assemble for lawful purposes existed long before the adoption of the Constitution of the United States. In fact, it is and always has been, one of the attributes of citizenship under a free government."

It is not that the rights of assembly and association are lesser rights. The slowness is emphasizing these rights has undoubtedly been due to their close relationship to the right of free speech. But the importance of giving them attention cannot be understated. As Chief Justice Hughes stated for the Court in *DeJonge v. Oregon* (229 U.S. 353 (1937)), a case which expressly extended the "liberty" guaranteed by the Fourteenth Amendment to include freedom of assembly, "The right of peaceable assembly is a right cognate to those of free speech and is equally fundamental."

It is not that these rights are not vital to our form of democracy. DeToqueville, early in the 19th century, commented on the propensity of Americans for forming associations and on the importance of associations in democracies as safeguards against the "tyranny of the majority" and abuses of political power. Indeed, without the right to form and associate in political parties, it is hard to see how we could have a democratic government at all.

Yet it was not until the 1958 decision of *NAACP v. Alabama* (357 U.S. 449 (1958)) that the Supreme Court proclaimed, in clear terms, a freedom that had been latent in many years of constitutional development. "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech."

Can Government Do This?

Through this exercise, students will be able to:

- identify and discuss government actions that are said to limit freedom of association
- solicit opinions about limitations to this freedom with a questionnaire and analyze the findings, particularly in terms of awareness of issues
- cite ways to make citizens more aware of the importance of protecting their First Amendment rights

Procedures

DISTRIBUTING THE QUESTIONNAIRE

The courts have said that governments can limit the right to assemble for redress of grievances to preserve order and safety. Associations for criminal activities are held illegal. Can the right to associate be limited legally in other ways?

The questionnaire "Do These Government Actions Restrict Our Right to Join Associations?" poses controversial actions of recent decades that some have argued unconstitutionally restrict freedom of association. To sample current feelings on these questions, use the questionnaire in one of two ways:

- If you have just one class period, distribute it to the class and let each member fill it out privately. Collect these and tally responses for later discussion.
- If you have two class periods, provide each class member with four questionnaires to be filled out by persons outside of class. The only requirement is that the persons interviewed be in different age groups: 10-20 years old; 21-35; 35-50; and over 50, and that the age group be marked on the questionnaire. These should be collected and tallied the next day, before the discussion of questions.

Note that this is not in any way intended to be a controlled scientific survey. It is only to obtain opinions on the issues.

DISCUSSING THE RESULTS

After the results of the class and outside-the-class questionnaires are tallied, report the results to the class. Begin discussion by examining the questions (and responses) in pairs. Consider how the class voted on each set. How did their votes compare with respondents outside of class? How did the different age groups compare in their votes on the two questions being considered? Did age make any difference? Was there general agreement on the responses?

After the initial discussion of each pair of questions, report to the class what the Supreme Court decisions were on the issues posed (see below). Note that questions are included to encourage further student discussion.

Court Decisions

Questions 1 and 2. Loyalty oaths have been primarily directed against the Communist party. The courts have wavered in decisions on cases challenging the constitutionality of loyalty oaths. The oath in question 1

was held unconstitutional in *Cramp v. Board of Public Instruction* (368 U.S. 178 (1961)) as being overbroad. And courts have come to hold that people should not be penalized simply for being members of the Communist party unless there is evidence of their knowing and furthering its unlawful activities (*Elfbrandt v. Russell* 384 U.S. 11 (1966)). The oath in question 2, less direct in its thrust at Communist party membership, was upheld by the U.S. Supreme Court (*Cole v. Richardson* 405 U.S. 676 (1979)).

Issues at stake in loyalty oaths are right to freedom of association and national security. Ask students if they work as security measures? Will all dedicated Communists refuse to sign them? Or do the oaths serve to harass more than they do to protect? Does it make a difference if oaths are demanded of university professors or Department of Defense members?

Questions 3 and 4. *NAACP v. Alabama* (357 U.S. 449 (1958)) is the landmark case on the issue of question 3. The Supreme Court ruled that the NAACP did not have to disclose its membership list to the state. It said such a requirement to identify people could lead to "economic reprisals, loss of employment, physical coercion, and other manifestations of public hostility."

Shelton v. Tucker (364 U.S. 479 (1960)) concerned an Arkansas law requiring public school teachers to annually report the names and addresses of all associations to which they belonged, contributed to, or paid dues to in the past five years. The Supreme Court declared it unconstitutional (question 4).

In discussing these issues, students might consider what legitimate reasons there might be, if any, for a government knowing an organization's members? Or would there be any legitimate reasons for a government's knowing what organizations any of its employees – school teachers, judges, office workers, police, roadworkers, etc. – participated in? How do government requirements for such information limit freedom of association, if they do?

Questions 5 and 6. Groups protesting segregation laws, the Vietnam War, nuclear power and weapons, etc., have all reported "harassment" in terms of law enforcers photographing members or recording the license numbers of their cars at gatherings. Members of nuclear power protest groups have reported having their organizations infiltrated by undercover law enforcers or power company employees. The constitutionality of these actions has not been established. The class should discuss their views: Should such "harassment" be legal? In all instances? Does it matter that such actions are standard in more repressive nations? Do they limit freedom of association? In what ways?

Do These Government Actions Restrict Our Right to Join Associations?

The freedom to join and participate in associations, political or otherwise, is one of the rights granted you by the Bill of Rights. Would you object to any of the following government actions because they would restrict your right to join in associations?

1. __Yes __No To be employed, you must sign an oath saying "I have never lent aid, support, advice, or counsel, or influence to the Communist party."
2. __Yes __No To be employed, you must sign an oath saying "I will oppose any attempt to overthrow the government by force, violence, or unconstitutional means."
3. __Yes __No The state government requires a controversial political group to supply the state with a list of its members and their addresses.
4. __Yes __No The city council requires all public school teachers to submit a list of all the associations to which they belong or contribute every year.
5. __Yes __No The sheriff records the license numbers of cars of members attending the meeting of a generally unpopular political group.
6. __Yes __No An undercover police officer joins a political protest group to observe its activities.

Wrapping It Up

Finally, with the class examine the responses in terms of the whole questionnaire. On which questions was there the greatest consensus? On which the least? How might this be explained? Which age groups, if any, seemed most concerned about protecting the right of association? Why might this group (these groups) show more concern? Have the courts been more solicitous, or less, about protecting this right than the poll-responders?

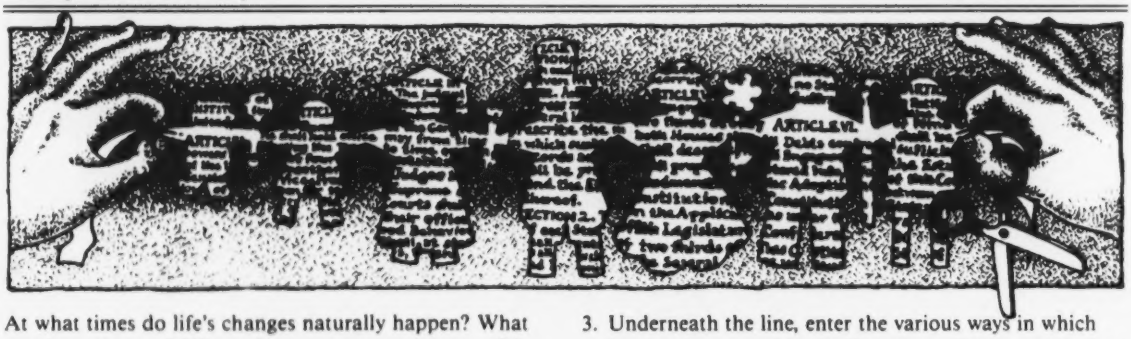
Ask students if they agreed or disagreed with the majority view on the questions. Have them explain their stands. Ask students, also, if after discussion, they would alter any of their questionnaire responses. What would be their reasons?

Have class members consider how to make citizens more aware of their rights and the importance of protecting them. What could be done in schools? In the community? By local organizations? Using the mass media? By students themselves? List the suggestions – and, if feasible, implement one.

Ann Blum is Law Education Coordinator, Governmental Education Division, of the Carl Vinson Institute of Government at the University of Georgia. This strategy is adapted from the teachers manual for An Introduction to Law in Georgia *by Ann Blum and Jeannette Moon, Athens: Vinson Institute of Government, University of Georgia, in press. The strategy was reviewed by Paul Kurtz, a professor of law at the university, for legal accuracy.*

Liberty

It's My Life/Secondary Jennifer D. Bloom



Susan Wise

At what times do life's changes naturally happen? What are these changes? Where does government intervene? Is this intervention fair? What are the governmental reasons for intervention? Are these good reasons? Where does government receive the authority to do this? What would happen if government didn't intervene?

The Constitution spells out possible governmental action that has been deemed necessary for the preservation of basic American values: justice, fairness, equality, freedom, etc. However, most students believe that only lawyers and judges concern themselves with the Constitution. This activity is an attempt to relate the Constitution and state and federal action to the lives of all students in the classroom.

It's My Life is an activity that has been used by lawyers in many Minnesota classrooms. Although the focus of the activity presented here is government power, the activity is also a very good way to introduce the wide variety of laws that exist, to teach about the legal implications of becoming an adult, to discuss the need for additional laws and the changes in existing laws, etc.

Objectives

1. Introduce governmental regulation of individual activities.
2. Consider the authority for governmental action: state and federal constitutions.
3. Consider the rationale for governmental action.
4. Compare individual rights with the public good.
5. Compare natural occurrence of life's events with the times of governmental action. (For example, the inability to continue working with mandatory retirement.)

This activity will take one class period (more if students are to analyze Constitution, Bill of Rights, etc.) It should be done as a general discussion with the entire class.

Procedure

1. Draw a long line on the blackboard. At one end write birth, at the other write death.
2. Instruct the students to brainstorm various events in their lives. Enter these events in chronological order at the top of the line. (Examples are learn to walk and talk, go to school, retire.)
3. Underneath the line, enter the various ways in which law has intervened in the life events. (For example, the law says children cannot get married before age 16.) Compare intervention with non-intervention. (For example, age at which a girl can become a mother.) Consider the reasons for intervention: public policy, possibility of successful intervention, etc.
4. Discuss the impact of technology on life events (birth, death, child bearing) and the frequent failure of law to keep pace with technology. (For example, invitro fertilization, life sustaining measures.)
5. Consider life without governmental intervention. Questions to ask:
   a. Does law unnecessarily interfere with the right to live one's life as one chooses?
   b. Does law protect some people's rights (minority rights to equal employment)?
   c. When does the public need and welfare override individual rights?
6. Discuss the "right to pursue happiness" as stated in the Declaration of Independence. Look over the life line, identify the times when the government interferes with one's pursuit of happiness. What does happiness mean? What did the signers of the Declaration of Independence mean by the word? Has the meaning changed over 200 years?
7. Look at the Constitution. Find sections that give government authority for its actions. Discuss the historical development of the public's need and governmental response. (For example, students realize that when they begin working they find they are paying income taxes. Discuss with them the development of taxes.)
8. Considering technological developments and legal trends, brainstorm the picture of a life line in the year 2187.
   a. What new laws might be necessary?
   b. Will governmental intervention be more or less?
   c. What individual rights might be in jeopardy?
   d. What individual rights might receive more protection?
9. Discuss possible citizen action that can help ensure a "happy" life line in the future.

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This exercise will help students understand how the historical antecedents of the Bill of Rights affect their daily lives by protecting fundamental freedoms.

As a result of this lesson, students will be able to:

1. Recognize fundamental freedoms and understand why they're important.
2. Analyze and apply the historical antecedents to the Bill of Rights, matching various sources of liberties to the freedoms expounded in the Bill of Rights.
3. Look at some contemporary cases to see how these fundamental freedoms are applied today.

A World Without Liberty

Have students read the story "A Day in the Life of James and Jane Justin" on p. 23. After reading the story, ask students to compile a list entitled "Fundamental Freedoms Denied James and Jane Justin." In the list, students should indentify each action by the guards, or supervisor, that denies what they believe to be fundamental freedoms, and briefly describe each freedom that is being denied. You may wish to do this as a brainstorming activity listing the denied freedoms on the chalkboard.

For each denied freedom, ask students to explain the purpose and importance of the freedom as a fundamental right of every individual. You may have students answer this question in small groups.

If there is time, ask students to do some research into sources of our fundamental freedoms (i.e., the historical antecedents of the Bill of Rights). After they have reviewed the historical material, have students match the specific sources of our liberties with the freedoms denied to the Justins in the state of Tyranny. Due to the extensive list of liberties, you may wish to have this as a small group activity, assigning different specific sources or historical periods to various groups.

Applying Freedoms to Specific Cases

Have students read each case. Ask them to use materials from boxes elsewhere in this magazine and the amendments to the U.S. Constitution to answer the questions following each case.

CASE 1

The police received information from a reliable informant that Peter Pusher was selling narcotics. The police then went to the building where Pusher lived. The police forced open the door to Pusher's bedroom. On a nightstand beside Pusher's bed, the police saw two capsules. Pusher grabbed the capsules and swallowed them. The police jumped on him and tried to get the capsules out of his mouth. When that failed, Pusher was handcuffed and taken to city hospital. At the direction of the police, the emergency room doctors pumped Pusher's stomach. Among the substances pumped out of Pusher's stomach were two capsules containing morphine (a drug that is prohibited by state and federal law). Pusher was charged with illegal drug possession. Based on the evidence introduced during Pusher's trial, including the morphine capsules, Pusher was convicted of illegal drug possession and sentenced to prison.

Pusher appealed his conviction. He claimed that the morphine capsules should not have been used as evidence in his trial because they were taken from his body against his will. Pusher said this was a violation of his constitutional right to be free from self-incrimination. Pusher asked the appeals court to reverse his conviction.

1. What, if any, fundamental freedoms are involved in this case?
2. Identify at least one source supporting the fundamental freedoms involved in this case.

Suggested Answers. Students' answers to point one may vary, but appropriate responses may include:

- freedom from unreasonable search and seizure
- freedom from self-incrimination
- right not to be deprived of life, liberty, or property without due process of law

Note: This case is based on *Rochin v. California*, 342 U.S. 166 (1951). In this case, the U.S. Supreme Court concluded that freedom from self-incrimination applies to evidence taken by forcible invasion of a suspect's body. The government cannot use evidence taken by forcible invasion of the body because the suspect was forced to testify against himself or herself.

CASE 2

Ward Wanderer was charged with breaking and entering into a pool room with intent to commit petty larceny. These charges were felonies in Florida, where Wanderer lived. Unable to afford an attorney, Wanderer asked the trial judge to appoint an attorney to represent him. The judge refused, informing Wanderer that state law only permitted court-appointed attorneys to represent a defendant when that person was charged with a capital crime (that is, crimes that are punishable by the death penalty or life imprisonment). Wanderer was left to conduct his own defense in his trial. The jury returned a verdict of guilty. Wanderer was sentenced to serve five years in the state prison.

While in prison, Wanderer appealed his case. He claimed that the state's refusal to appoint an attorney was a violation of the due process quarantees of the Fifth, Sixth, and Fourteenth Amendments of the Constitution. He also claimed that due process included the right to the assistance of an attorney for his defense. Wanderer requested the appeals court to reverse his conviction. He asked that the court order a new trial with an attorney appointed to represent him.

1. What, if any, fundamental freedoms are involved in this case?

(continued on page 24)

A Day in the Life of James and Jane Justin

Two young adults, James and Jane Justin, arrive in the nation of Tyranny on a rainy Friday morning. A road sign warns, *"Entering the state of Submission, United States of Tyranny: All Persons Entering Must Obey Tyranny's Authority—Violators Will Be Punished."*

The Justins stop their camper at a checkpoint where there are security guards. James Justin also notices security cameras that are aimed at their camper. The guards are well armed with what appear to be automatic rifles. Some of the guards have on green fatigues with the initials NGOT (National Guard of Tyranny); other guards wear brown uniforms with the initials SS (State Security).

One of the national guard asks the Justins for identification. The guard also asks them to step out of their camper and give keys to another national guard standing by. The guard reviews their driver's licenses, and then, without returning them, tells them to step inside the national guard headquarters. The guard with the keys has opened the rear door of the Justin's camper and has removed their luggage. The guard has also set a magazine and newspaper aside that was taken from inside the vehicle.

Meanwhile, James and Jane Justin have been separated—James Justin taken into a room by a male national guard and Jane Justin into a different room by a female guard. Both James and Jane Justin are searched. Afterwards, they are told to report to the main office of the national guard's headquarters. Upon entering the main office, the Justins observe a pile containing some of their t-shirts, some books, a religious pamphlet, a daily newspaper, and a hunting rifle. A supervisor of the guards informs the Justins that these materials are being confiscated by the state security for Tyranny because they contain subversive messages.

Jane Justin protests, asking what is subversive and threatening. She is told to shut-up. The supervisor holds up a t-shirt from the luggage that has a large question mark in the center with the words "QUESTION AUTHORITY" printed under the question mark. The supervisor says such expressions are not permitted in Tyranny, and that the other items confiscated were not on the approved reading list of the Ministry of Information. Only approved items may be read or spoken publicly in Tyranny.

The national guard supervisor then asks about the religious pamphlet. Jane Justin boldly proclaims, "Look, our religious beliefs are personal, and they are none of your business!" The supervisor calls her a "sacrilegious swine." A state security guard informs the Justins that there is only one religion in the state of Submission, and that is total obedience to Tyranny.

Jane Justin is forcibly pushed onto a chair by guards, and the supervisor tells her to shut-up and learn to obey authority or she will be bound and gagged. James Justin protests the treatment of Jane and demands the return of their property.

The supervisor calls in two other guards and tells them to place the Justins in separate detention rooms until a more thorough investigation can be done. Again, the Justins protest, asking why they are being detained and demanding the right to call an attorney. The supervisor laughs as the Justins are led off by the guards. James Justin asks the state security guard to help them. He asks, "Who can we appeal to in the state for help?" The state security guard soberly explains that there are no state rights—the only right is the absolute authority of Tyranny to control all lives.

The Justins are held in isolation for hours—no food, no sanitary facilities, and no communication with anyone. Meanwhile, the state security and national guard officers confiscate the Justin's camper. The officers eat food and drink beverages from the refrigerator, and they sleep in the bunks. When the Justins find out about the use and abuse of their camper, they are again outraged. The Justins are told that in Tyranny the people have to share their homes to help shelter and feed state and national guard officers. James Justin begins to cry. Jane Justin stares in anger at the guards. The journey into Tyranny had become a nightmare.

LIST AND EXAMPLES

After reading "A Day in the Life of James and Jane Justin," ask students to make a list of the fundamental freedoms they believe were denied James and Jane Justin. For each freedom they identify, ask them to briefly explain why they believe this is a fundamental freedom.

Ask them where these rights come from. Have them review the Bill of Rights and/or the excerpts from the great documents highlighted in *Update*, Winter, 1986. After reviewing this material, have them identify at least one source for each fundamental freedom denied James and Jane Justin.

Here's an example. The Justins are denied freedom of movement; they are detained and taken into custody without being informed of any charges against them.

The Justins were imprisoned without the legal judgment of their peers. This action denies a fundamental freedom that is recognized in the following from the Magna Carta:

> No free man shall be taken or imprisoned or dispossessed, or outlawed, or banished, or in any way destroyed, nor will we go upon him, nor send upon him, except by the legal judgment of his peers or by the law of the land.

Their imprisonment also violates the Fifth Amendment to the U.S. Constitution:

> No person shall. . . be deprived of life, liberty, or property, without due process of law.

You may identify more than one source for each freedom denied the Justins.

(continued from page 22)

2. Identify at least one source supporting the fundamental freedoms involved in this case.

Suggested Answers. Students' answers may vary, but appropriate responses to question one may include:

- right not to be deprived of life, liberty, or property without due process of law
- right to be informed of the nature and cause of the accusation
- right to have the assistance of an attorney

Note: This case is based on *Gideon v. Wainwright*, 372 U.S. 335 (1963). In this case, the U.S. Supreme Court held that persons accused of felonies have the right to an attorney, and that if the accused is unable to hire his or her own attorney, then the judge will provide the accused with an attorney at the state's expense. This right was expanded in the case of *Argersinger v. Hamlin*, 407 U.S. 25 (1972). In that case, the U.S. Supreme Court held that persons accused of any crime, including a misdemeanor where a jail term may be imposed, have the right to an attorney. If the defendant cannot afford to hire an attorney, the state must appoint an attorney to represent the defendant at the state's expense.

CASE 3

Carla, a five-year-old child, was in a serious accident. She lost a lot of blood. Witnesses to the accident brought her to the nearest hospital. The doctors at the hospital agreed that Carla would die in a few hours unless she was given blood. Carla parents were called, but they refused to give their permission for a blood transfusion because blood transfusions were against their religious beliefs. The doctors asked a judge to issue a court order giving the hospital temporary custody of Carla. This would allow the doctors to give Carla a blood transfusion and other medical treatment necessary to save her life. The parents told the judge that they were Carla's legal guardians and that only they could decide how to properly care for her. The parents believed their religious faith would provide for Carla. The doctors insisted that Carla needed immediate medical treatment in order to save her life.

1. What, if any, fundamental freedoms are involved in this case? (freedom of religious beliefs)

Note: This is based on the case of *People ex rel. Wallace v. Laberenz*, 344 U.S. 824 (1952). The U.S. Supreme Court upheld a lower court ruling that freedom of religion includes the freedom of a parent to refuse medical treatment for a minor child because of religious beliefs about treatment, except where the treatment is necessary to save the minor's life or to treat a serious medical condition. In this example, then, the doctors would have the right to give her a transfusion, since her life was threatened. In a less serious case, the rights of the parents would prevail.

Steve Jenkins is law-related education director of the Bar Association of Metropolitan St. Louis. He was assisted by Nancy Eschmann of the bar association in preparing these activities for publication. *The three cases in this exercise are excerpted from* Excel in Civics: Lessons in Citizenship *(1985) by Steve Jenkins and Susan Spiegel, and reprinted by permission of West Publishing Company.*

About This Handbook

This is one of four special bar-school partnership handbooks on great constitutional themes: Liberty, Equality, Justice, and Power. The articles and strategies in these handbooks are reprinted from *Update on Law-Related Education*, a magazine published by the American Bar Association Special Committee on Youth Education for Citizenship and appearing quarterly during the school year.

These handbooks are produced by the American Bar Association's Special Committee on Youth Education for Citizenship, 750 N. Lake Shore Drive, Chicago, IL 60611, 312/988-5725. They are made possible by a grant from the Law-Related Education Office of the U. S. Department of Education, Grant Number G008610548. We express our gratitude to the Department for its support of this project to improve bar-school partnerships, of which the handbook series is a part.

Points of view or opinions in this document are those of the authors and do not necessarily represent the official position or policies of the American Bar Association or the Department of Education.